

Internal Revenue Service  
**memorandum**

CC:IL-N-3970-89  
Br4:RBWeinstock

date: APR 04 1989

to: District Counsel, Chicago MW:CHI  
Attn. William I. Miller

from: Assistant Chief Counsel (Tax Litigation)

subject: [REDACTED]

This is in response to your memorandum dated February 21, 1989, requesting tax litigation advice in the above-entitled case.

ISSUE

Whether the Service should litigate whether or not the petitioner is a church for purposes of I.R.C. §§ 170(b)(1)(A) and 509(a)(1).

CONCLUSION

While the chances for an adverse decision as to petitioner's claim for church status are small, we believe that petitioner's claim for classification as a publicly supported organization on other grounds is substantially stronger, and we would not object to a settlement recognizing the organization as a publicly supported organization.

DISCUSSION

We have coordinated this matter with the Exempt Organizations Technical Division (OP:E:EO) and they have provided their views by memorandum dated March 30, 1989 (copy enclosed). The potential for an adverse decision as to the organization's claim for church status is small. However, they also believe the petitioner has a strong claim for qualification as a public charity under I.R.C. § 170(b)(1)(A)(vi) through the facts and circumstances test of Treas. Reg. § 1.170A-9(e)(3). We agree.

Factors which support public charity classification that OP:E:EO cite include the fact that this organization has public support in excess of the 10 percent figure; a continuous and bona fide program of solicitation of funds from the general public; and facilities that are open to the public. If the petitioner is amenable to this classification, there is no objection to settling the case on this basis.

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We note that the Appeals Supporting Statement indicates that the petitioner was willing to concede that it was not a church and suggested the government concede the question of public charity status. There is also material in the administrative record which indicates that petitioner received an increasing amount of public support in more recent years (1985-1986). Therefore, recognizing petitioner's public charity status would appear to be a viable basis to settle this case. You should coordinate any actual settlement with the Chief, EP/EO Division of the Chicago Key District.

We are herewith returning the copy of the stipulated administrative record that your office forwarded to us with your request for tax litigation advice. If you require further assistance or have any further questions on this matter, please contact Ronald Weinstock at FTS 566-3345.

MARLENE GROSS  
Assistant Chief Counsel  
(Tax Litigation)

By: 

HENRY G. SALAMY  
Chief, Branch No. 4  
Tax Litigation Division

Enclosures:

Stipulated Administrative Record  
OF:EO memorandum